

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 17. TRANSPORTATION

#### CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

[R06-335]

#### PREAMBLE

**1. Sections Affected**

Article 6  
R17-1-601  
R17-1-602  
R17-1-603  
R17-1-604  
R17-1-605  
R17-1-606  
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R17-1-610

**Rulemaking Action**

New Article  
New Section  
New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-331 and 28-363

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 3383, September 15, 2006

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: John Lindley, Administrative Rules Analyst

Address: Administrative Rules Unit  
Department of Transportation, Motor Vehicle Division  
1801 W. Jefferson St., Mail Drop 530M  
Phoenix, AZ 85007

Telephone: (602) 712-8804

Fax: (602) 712-3081

E-mail: [jlindley@azdot.gov](mailto:jlindley@azdot.gov)

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at [www.azdot.gov/mvd/mvdrules/rules.asp](http://www.azdot.gov/mvd/mvdrules/rules.asp)

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Arizona Department of Transportation proposes to adopt rules that provide formal guidelines for all solicitation activities sought to be conducted on Department property. Although similar solicitation guidelines are set forth in

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rules promulgated by the Arizona Department of Administration, ADOT buildings are not subject to the ADOA regulations. The Department's need for its own rules on this subject is therefore immediate, due to a sharp increase in the number of requests received from persons and organizations seeking permission to conduct solicitations at high-traffic Motor Vehicle Division Customer Service offices located throughout the state, as well as a corresponding increase in the number of complaints the Department has received about the intrusive nature of these solicitation activities.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The proposed rules will prohibit all solicitation activities involving the collection of monetary contributions and the exchange of money for goods or services. ADOT has determined that a complete ban of this particular form of solicitation activity is necessary, because it is the most disruptive of the Department's regular business operations and places its customers at too great a risk of fraud and/or theft.

The anticipated economic impact to various organizations no longer allowed to exchange goods or services for money, or to collect monetary contributions on Department property, will vary greatly depending on the type of organization. The Department anticipates that individual solicitation organizations may temporarily experience a minimal to moderate economic impact due to their loss of potential sales or contributions while having to seek an alternative venue.

The Department anticipates that consumers of Department products and services in many communities will experience an un-quantifiable benefit from the additional controls and protections provided under the proposed rules, which should ensure that consumers are not inundated by solicitors each time they need to enter or exit a Department building to accomplish personal business.

The anticipated economic impact to the solicitors who remain eligible to apply for a permit will be minimal and include the costs involved with completing the application process; providing the Department with copies of all solicitation materials; and supplying the appropriate equipment for solicitation activities.

The anticipated economic impact to the Department should be moderate and results from having to provide the resources necessary for rulemaking; administrative costs involved with reviewing, approving, or denying solicitation requests; making appropriate notifications; and conducting administrative hearings when applicable. However, the Department expects to benefit substantially by reducing the number of approved solicitors and the amount of resources necessary for the Department's Office of Inspector General to investigate the numerous solicitation-related complaints that are currently being made on a regular basis by Motor Vehicle Division customers and employees. The proposed rules should also provide much needed relief to individual office supervisors and other Division staff, who now have to expend valuable time away from their regular duties in order to mediate interactions between solicitors and Department customers, which may contribute to longer customer wait times as well.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: John Lindley, Administrative Rules Analyst  
Address: Administrative Rules Unit  
Department of Transportation, Motor Vehicle Division  
1801 W. Jefferson St., Mail Drop 530M  
Phoenix, AZ 85007  
Telephone: (602) 712-8804  
Fax: (602) 712-3081  
E-mail: jlindley@azdot.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: October 23, 2006  
Time: 9:00 a.m.  
Location: 1801 W. Jefferson St., Room 403  
Phoenix, AZ 85007  
Nature: Oral Proceeding/Public Hearing

The public record in this rulemaking will close at 5:00 p.m. on October 23, 2006.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION  
ADMINISTRATION**

**ARTICLE 6. SOLICITATION**

Section

<u>R17-1-601.</u>	<u>Definitions</u>
<u>R17-1-602.</u>	<u>Applicability; Exemptions</u>
<u>R17-1-603.</u>	<u>Application for Permit</u>
<u>R17-1-604.</u>	<u>Application Processing; Time-frames</u>
<u>R17-1-605.</u>	<u>Permit Limitations</u>
<u>R17-1-606.</u>	<u>Permit Issuance; Denial; Appeal</u>
<u>R17-1-607.</u>	<u>Solicitor Responsibilities; Prohibited Activities</u>
<u>R17-1-608.</u>	<u>Signage Requirements</u>
<u>R17-1-609.</u>	<u>Revocation; Appeal</u>
<u>R17-1-610.</u>	<u>Hold Harmless; Assumption of the Risk</u>

**ARTICLE 6. SOLICITATION**

**R17-1-601. Definitions**

In addition to the definitions under A.R.S. § 28-101, the following terms and phrases apply to this Article, unless otherwise specified:

“Animal guide or service animal” means an animal that:

Completes a formal training program;

Assists its owner in one or more daily living tasks associated with a productive lifestyle; and is

Trained to not pose a danger to the health and safety of the general public.

“Application” means a Solicitation Request form completed and submitted to the Division Director’s Office by a person seeking to conduct a solicitation on Department property.

“Department” means the Arizona Department of Transportation.

“Department building” means a building occupied, operated, and maintained under the jurisdiction of the Director.

“Department property” means real property and buildings under the jurisdiction of the Director.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designee.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Division headquarters” means 1801 West Jefferson Street, Phoenix, Arizona 85007.

“Objectionable tactics” means any unreasonably aggressive behavior on the part of a solicitor, including but not limited to, shouting at or verbally harassing a customer or employee; continuing to solicit from a person after that person has given a negative response to the solicitation; following the person after receiving such a response; intimidating a customer or employee; or preventing or interrupting the flow of customer traffic to or from a Department building.

“Permit” means the approved Solicitation Request form signed by the Director.

“Person” has the meaning prescribed in A.R.S. § 1-215.

“Solicitation” means any activity, with the exception of those activities prohibited under R17-1-607, subsections (B)(3) and (B)(4), which can be interpreted as being for the expression of ideas, the distribution of information, or for the promo-

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tion of causes or memberships.

“Solicitation area” means a location outside a Department building, which shall be designated by an office supervisor for solicitation activities without interfering with business operations, blocking entry or exit doors, or inhibiting pathways to or from the building.

“Solicitation material” means advertising circulars, flyers, handbills, leaflets, petitions, or other printed information.

“Solicitor” means a person conducting a solicitation.

“Work site” means a location within a Department building where public employees or officers conduct the daily business of the Department. Where applicable, a cafeteria or break room may be designated a work site by an office supervisor.

**R17-1-602. Applicability; Exemptions**

**A.** This Article does not apply to the following state programs:

1. The State Deferred Compensation Program.
2. The State Employees Charitable Campaign.
3. The U.S. Savings Bond Drive.
4. The United Blood Services Blood Drive.
5. The Capitol Rideshare Commuter Club.
6. The Capitol Rideshare Clean Air Campaign.
7. The Employee Wellness Program, or
8. The employee recognition programs of the Department or Division.

**B.** An employee association composed principally of employees of state government agencies shall apply under this Article for a permit to conduct a solicitation at a Department work site.

**R17-1-603. Application for Permit**

**A.** A person seeking to conduct a solicitation on Department property shall first apply to the Division Director’s Office for a permit by completing a Solicitation Request form provided by the Department.

**B.** The completed application shall be submitted to Division headquarters, either in person or by mail, at least 15 calendar days before the desired date of the solicitation.

**C.** A completed application is one that is legible and contains, at a minimum, all of the following information:

1. The name, address, and telephone number of the applicant. If a permit is requested on behalf of an organization, the application shall also include the name, address, and telephone number of the organization, as well as its primary representative or contact person that shall be deemed in charge of and responsible for the proposed solicitation;
2. The proposed date of the solicitation and the approximate starting and concluding times;
3. The approximate number and names of persons who will take part in conducting solicitation activities on behalf of the applicant;
4. The specific proposed office location for the solicitation;
5. A general description of the solicitation’s purpose;
6. Copies of all solicitation materials to be used; and
7. A signed acknowledgment attesting to the fact that the applicant understands and agrees to comply with all of the requirements under this Article.

**R17-1-604. Application Processing; Time-frames**

**A.** The Department shall not process an application for a permit until the applicant has fully complied with the application requirements under R17-1-603.

**B.** The Department shall provide notice to the applicant that the application is either complete or incomplete within five calendar days of receiving the application.

1. The date of receipt is the date the Department stamps on the application when received.
2. If the application is incomplete, the notice shall indicate what required information is missing.

**C.** An applicant with an incomplete application shall supply the missing information to the Department within five calendar days after the date of notice provided by the Department under subsection (B).

1. The Department may deny the permit if the applicant fails to supply the missing information within five calendar days after the date of notice.
2. Upon receipt of all missing information, the Department shall notify the applicant that the application is complete.

**D.** The Director shall render a permit decision within 10 calendar days of the date a complete application is received. The date of receipt is the date on the Division notice provided to the applicant under subsections (B) or (C).

**E.** For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:

1. Administrative completeness review time-frame: five calendar days.
2. Substantive review time-frame: 10 calendar days.
3. Overall time-frame: 15 calendar days.

**R17-1-605. Permit Limitations**

- A. Permits shall be issued on a first-come, first-served basis, and no earlier than 60 days before the proposed solicitation.
- B. A maximum of three solicitations may be conducted at a Department building at any one time.
- C. A maximum of three authorized representatives may conduct solicitation activities on behalf of a permit-holder at any one location.
- D. Solicitations may be conducted on Department property only on weekdays, between the hours of 8:30 a.m. and 4:30 p.m.

**R17-1-606. Permit Issuance; Denial; Appeal**

- A. If the Director approves an application for a permit, the permit issued:
  - 1. Shall expire after the approved solicitation time-period specified on the permit, unless previously revoked;
  - 2. Shall not be valid for more than 90 days from the effective date approved by the Director;
  - 3. Shall not be transferred or assigned, in whole or in part, to any person other than the person or organization to whom the permit is issued; and
  - 4. May be renewed only upon submission of a new application.
- B. The Director may deny an application for a permit for one or more of the following reasons:
  - 1. The solicitation is likely to:
    - a. Interfere with the work of an employee or daily business of the Department;
    - b. Create a risk of injury to a person or risk of damage to property; or
    - c. Conflict with the time, place, manner, or duration of another solicitation for which a permit is already issued or pending;
  - 2. The applicant or solicitation fails to comply with the requirements of this Article or any other applicable rule or statute;
  - 3. The applicant, or person on whose behalf the application was made, has within 12 months of the date of application, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute; or
  - 4. The applicant, or person on whose behalf the application was made, has on three separate occasions within a five-year period, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute.
- C. If the Director denies an application for a permit, the Department shall send the applicant a written notice explaining:
  - 1. The Department's reason for the denial, with citations to supporting statute or rule;
  - 2. The applicant's right to a hearing to appeal the Department's action under Article 5 of this Chapter; and
  - 3. The time-frame for requesting a hearing under Article 5 of this Chapter.

**R17-1-607. Solicitor Responsibilities; Prohibited Activities**

- A. An approved solicitor, after receiving express written permission from the Director for a solicitation on Department property, shall:
  - 1. Provide a table to be used for all authorized solicitation activity;
  - 2. Present the original approved Solicitation Request form, without any modifications or alterations, to the office supervisor for inspection and sign-in prior to setting up a table or distributing materials;
  - 3. Provide at least one form of photo identification to the office supervisor for each person taking part in conducting solicitation activities on behalf of the permit-holder;
  - 4. Maintain a copy of the approved Solicitation Request form at each authorized location at all times;
  - 5. Set-up a table only in the solicitation area designated by the office supervisor;
  - 6. Remain outside the building, at the table, while performing any solicitation activity;
  - 7. Ensure that no entry or exit doors are blocked at any time;
  - 8. Ensure that no solicitation activity interferes with customer access to or from the building;
  - 9. Ensure that no solicitation activity interferes with Department operations; and
  - 10. Ensure that all solicitors employed by, or acting on behalf of, the permit-holder display a name badge that is at least three inches in height and four inches in width. The name badge shall contain:
    - a. The name of the organization conducting the solicitation, if applicable;
    - b. The organization's address;
    - c. The name of the individual solicitor in bold letters; and
    - d. The words "Authorized Representative."
- B. A solicitor shall not:
  - 1. Conduct any type of solicitation on Department property without the express written permission of the Director issued under this Article;
  - 2. Perform any activity not specifically authorized by the permit;
  - 3. Solicit monetary contributions of any kind, whether for charitable purposes or not;

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4. Offer goods or services for sale, or engage in any other activity involving the exchange of money for a product or service;
5. Engage in any solicitation activity outside of the solicitation area designated by the office supervisor;
6. Use profane or offensive language, or engage in any objectionable tactics as defined in R17-1-601;
7. Use any manual or electronic audio amplification device;
8. Use any Department materials, supplies, equipment, or other resources to conduct a solicitation;
9. Bring an animal, other than an animal guide or service animal, into a designated solicitation area;
10. Leave garbage, litter, trash, human or animal waste, or any other kind of waste on Department property unless the waste is deposited in a container the Department maintains for that kind of waste;
11. Conduct a solicitation outside the hours of 8:30 a.m. to 4:30 p.m. on a weekday; or
12. Conduct a solicitation at any Department location on a Saturday, Sunday, or legal holiday.

**R17-1-608. Signage Requirements**

- A. A solicitor approved for conducting a solicitation at any Division location shall prominently display, at each solicitation table, a sign that is clearly visible to the public.
  1. Each sign shall:
    - a. Be at least 48" high and 36" wide;
    - b. Be printed in Times New Roman font, with a minimum font size of 72 point; and
    - c. Include the following language: "(Name of company or organization represented) is a private organization. Its representatives are not affiliated with, nor are they employees of, the state of Arizona or the Arizona Department of Transportation, Motor Vehicle Division."
  2. Each sign for a solicitor providing voter registration services shall include the following additional language: "The Motor Vehicle Division provides voter registration services inside all Customer Service offices and on the Internet at www.ServiceArizona.com."
- B. No additional signage or posters shall be allowed.

**R17-1-609. Revocation; Appeal**

- A. The Director may revoke a permit and ask a solicitor to leave the premises if the Director determines that:
  1. The solicitor or solicitation has failed to comply with this Article or any other applicable rule or statute; or
  2. The solicitor's permit application contained a false or misleading statement or a material omission.
- B. The Department shall send a written notice to the solicitor, within three business days after the revocation of a permit, explaining:
  1. The reason for the revocation, with citations to supporting statute or rule;
  2. The solicitor's right to request a hearing to appeal the Department's action under Article 5 of this Chapter; and
  3. The time-frame for requesting a hearing under Article 5 of this Chapter.
- C. A person or organization that has had a previous solicitation permit revoked by the Director, due to non-compliance with this Article, or any other applicable rule or statute, shall be ineligible to re-apply for another permit for a period of 12 months from the date of revocation.
- D. If an individual solicitor or organization has had a permit issued under this Article revoked three separate times in any five-year period, the individual solicitor or organization shall be permanently disqualified from engaging in solicitation activities on Department property.

**R17-1-610. Hold Harmless; Assumption of the Risk**

- A. A solicitor shall be fully and exclusively liable for all claims, losses, demands or judgments, including costs, expenses, and attorney or witness fees, arising from the bodily injury or death of any person, or damage to property incurred as a result of a negligent or intentional act, omission, or other misconduct by the solicitor, or by any other person acting on behalf of the solicitor. The solicitor shall therefore indemnify, defend, and hold harmless from all such liabilities, the Arizona Department of Transportation and its officers and employees.
- B. All solicitation activities conducted on Department property are undertaken at the sole risk of the solicitor. The Arizona Department of Transportation shall not be responsible or liable for any loss or damage that may be suffered by an individual solicitor or organization while conducting a solicitation under this Article.